



Speech by

**Mr L. SPRINGBORG**

**MEMBER FOR WARWICK**

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Hansard 11 November 1999

**PUBLIC SECTOR ETHICS AMENDMENT BILL**

**Mr SPRINGBORG** (Warwick—NPA) (5.42 p.m.): It has been very interesting to sit here for the last little while and listen to the contributions of some honourable members. I refer particularly to the contribution made by the honourable member for Caboolture, the Leader of One Nation. It cannot go without some comment that he is the leader of a political party which was elected to this place on the basis of being anti-politicians, on the basis of a belief that a politician's job is a little easier than he has found it to be and on the basis that Parliament is full of unethical politicians. I think his admission that sometimes we have to be even more saintly than a saint to survive in this place is an indication of some of the difficulties faced by members of Parliament in trying to meet the expectations of the general community. I believe that the ethics industry has been pursued and profited from by some very unethical people in academia, in the media and in other areas in the community.

My comments on this Bill are predicated on the basis that I am generally extremely suspicious of and very worried about the issues of codes of conduct, ethics statements and ethics agendas, regardless of whether they are to be foisted upon members of Parliament or upon the Public Service. I understand that there are certain things the Premier wants to achieve with this legislation. The statements I make in this place may assist in making it a piece of legislation which will meet the Premier's objectives.

There is no doubt that there is considerable community unease about politics, politicians and the political process, and public administration generally. The Leader of the Opposition has already spoken on this, and I endorse his comments. I am very supportive of any legislation that will improve ethics in Government. My major concern with this Bill is that, although the Premier claims that it will achieve much, it is actually quite a weak piece of legislation.

Much is promised by this Bill, but if we are not careful very little will be delivered. The very fact that the Integrity Commissioner will be a part-time position, supported by fewer than two people, highlights the anticipated workload and importance of this office by the Government. I also have to say that the operation of the Public Sector Ethics Act in practice is still problematic. I will refer to the circumstances surrounding one apparent breach of a code of conduct under this Act and how it is being dealt with. I have to say that I am not very impressed.

Both the Premier and the Leader of the Opposition gave a very comprehensive outline of this Bill, and I will not repeat what has already been said. The object of this legislative exercise is well summed up in proposed section 25, which reads—

"The purpose of this part is to help Ministers and others to avoid conflicts of interest and in so doing to encourage confidence in public institutions."

The Integrity Commissioner will only be giving advice. There is no investigative role. The commissioner will advise designated persons about conflicts of interest and has a special role with respect to standard setting and public education. The role of public education could be very important and, if handled correctly, may go some way to addressing the serious alienation issues that others have referred to.

In many countries there is a belief that there needs to be on hand a person who can advise on conflict of interest and broader ethical issues. That is the case in various Canadian Provinces, at the

Federal level in the United States and, since the release of the Nolan report, in the British House of Commons.

The fact that we in this House are debating an initiative of this kind is something I am pleased about but, as I said, there are problems with this model. The coalition will be proposing amendments, and I hope that the Premier gives them serious consideration. A reform such as this, if it is to succeed, must have public confidence and must have ongoing bipartisan support. If there is any suspicion about the model or how it is being run, then it becomes an expensive waste of time. On top of that, it may contribute to even greater public cynicism about the political process.

I was disappointed that when the Premier introduced the Bill he could not help himself and spoke in his carping tone about reforming Labor Governments and about how this Government was returning public faith to our political processes. That is exactly the sort of partisan approach to a Bill such as this which undermines its effectiveness. If the Premier genuinely wants to improve ethics in Government, he should start by approaching issues such as this with less partisan overtones.

I turn now to a few concerns I have with the Bill. The first concern the Opposition has is that the Integrity Commissioner has no power to proactively look into conflict situations. The commissioner will operate in a totally passive and reactive manner. When introducing the Bill the Premier said—

"The Integrity Commissioner will not, in general, be a watchdog for conflicts of interest. The functions of the Integrity Commissioner do not empower the commissioner to conduct any independent investigation, decision making or enforcement, as this is currently the role of the Criminal Justice Commission and will remain so."

No-one wants a proliferation of investigative bodies that have overlapping responsibilities, but I would have thought that there are two distinctions to be drawn between the role of the Integrity Commissioner and the role of the Criminal Justice Commission. First, the concept of conflict of interest under this Bill is surely wider than official misconduct under the Criminal Justice Act. The Premier can correct me if I am wrong, but the potential scope of advice from the Integrity Commissioner would be wider than the current role of the Criminal Justice Commission. I have read section 32 of the Criminal Justice Act, and I think that a conflict of interest issue as defined in the Schedule is broader.

Second, even if there was no wider charter, the Premier knows only too well that the CJC has a discretion not to investigate and, based on the net bet affair, we all know just how difficult it can be these days for the CJC to launch a formal investigation. So in this context, and with the aim of actually proactively and positively allaying public concerns, the Bill should have provided greater scope for independent action.

We are not suggesting a carte blanche approach but, on the other hand, not giving the commissioner any scope for independent investigation seems overly restrictive. Not only is the commissioner reliant on persons seeking his or her advice, but the Bill places no positive obligation on persons to seek advice if there is an existing or potential conflict situation. Clearly, the Bill envisages that involuntary referrals will occur, because proposed section 30 allows the Premier, a Minister, a Parliamentary Secretary, the CEO of a department and the CEO of a Government entity to refer matters to the commissioner about third parties.

In these circumstances, I would like the Premier to respond and indicate why there is not a duty—even if it be a duty the breach of which does not result in any action—for designated persons to refer conflict situations to the commissioner. Obviously, whether it is a conflict or not is a matter that will not be resolved until the commissioner looks at it. Nevertheless, to ensure that this Bill is taken seriously and the services of the commissioner are used, it would have been preferable to have included some duty to seek advice. I will shortly be discussing section 84 of the Public Service Act, and I would like to know why that model was not adopted.

Another matter which weakens the effectiveness of this Bill is that it is limited to senior public servants. The definition of "designated person" in proposed section 27 prevents—from my reading of it—persons other than senior executive officers and CEOs being subject to a referral by the Premier or the head of the department. Conflicts of interest and significant ethical problems are not limited to the top of the Public Service or politics. In fact, some of the most serious ethical and conflict issues arise with non-senior officers, especially those handling moneys or enforcing police powers.

As the Premier would know, section 84 of the Public Service Act already requires each and every Public Service employee who has an interest that conflicts with a discharge of that employee's duties to disclose that interest to the CEO. The CEO, in turn, has an obligation to disclose conflicts under section 56. Accordingly, the requirement for all public servants to disclose conflicts already applies, and I would have thought that it was sensible and prudent to dovetail the section 84 requirement into the ability of those Public Service employees to seek advice under this Bill.

Under proposed section 37, the Integrity Commissioner is appointed by the Governor in Council for a term up to five years in duration. Proposed section 41 outlines how the commissioner can be removed from office. Alert Digest No. 8 states—

"Proposed section 41 stipulates grounds upon which the Governor in Council may terminate the appointment of the Integrity Commissioner. The first such ground is that the commissioner ... cannot satisfactorily perform the Integrity Commissioner's duties.

In the committee's view this provision exhibits a degree of imprecision. Whilst it clearly encompasses matters such as physical and mental incapacity, the nature of the commissioner's functions and the qualifications stipulated in proposed section 37(2) are such that questions could arise as to what other situations it might extend to."

Proposed section 37(2) provides as follows—

"A person is qualified for appointment as the Integrity Commissioner if the person has knowledge, experience, personal qualities and standing within the community suitable to the office."

For example, it might become widely known that the commissioner had, in respect of a private business dealing, conducted himself or herself in a manner which, though not illegal, might be considered quite unethical. Would this affect the commissioner's standing within the community to the extent that the commissioner would not be able to satisfactorily perform his or her duties? The committee recommended that the Premier consider amending the Bill to define at least some of the additional circumstances which would prevent the commissioner from satisfactorily performing his or her duties.

In his reply, the Premier said that the term "unsatisfactory performance" was broad enough to render any further definition problematic. I do not necessarily disagree with that, but it just highlights what a potentially unsatisfactory situation the Integrity Commissioner could be placed in. A person who will be looking at the Premier's request—for example, a Minister of the Crown or a Parliamentary Secretary—will be placed in a very difficult situation. If the commissioner is to give good advice, the commissioner's tenure should be as secure as possible. Being sacked by the Cabinet of the day for allegedly not satisfactorily performing his or her duties ensures that the commissioner could be rendered a "tame cat" on the one hand or a "sacrificial lamb" on the other. In either event, it is less than satisfactory. I would have thought that if the Government wanted to have the option to dispense with the services of the commissioner, a fairer and more objective basis should have been chosen.

Those are not all of my concerns about the Bill, but they highlight some of the issues which I believe need to be further explored. The Leader of the Opposition will be moving amendments which will significantly improve the operation of this flawed model. And as I said, I hope that the Premier takes them on board. One of the amendments is designed, for example, to ensure that a Minister of the Crown is able to seek advice about not just his or her CEO but also the senior executives in the department. This right exists for the Premier under proposed section 30, and it should extend to the Minister who is held accountable under the Westminster doctrine of ministerial responsibility for the actions of his or her department. As it stands, this Bill allows greater scope for the Premier to intervene in line departments than it gives to the Minister who is accountable for them—all in all, a strange and unsatisfactory situation.

I will conclude by highlighting an existing ethical problem involving the Public Sector Ethics Act and one which may or may not be dealt with by this Bill. During the Estimates hearings, I sought answers from the Attorney-General and Minister for Justice on the special terms and conditions awarded in the contract of employment to the Director-General of the Department of Justice, Ms Jane Macdonnell. They related to obtaining some \$2,000 cash in hand from publicly funded private air fares and more than \$4,000 being expended on rental of furniture for her home.

I do not intend to discuss this aspect of the matter, as it is not relevant to this Bill. However, what was relevant was the fact that, that very week, the director-general used departmental email facilities to give her explanation of the events disclosed during the Estimates hearings. I will not quibble about her getting a message out to staff; and although I strongly contest some of the things she said, I am not suggesting that she should not have done so. However, the email went much further than that, and I now quote the beginning and the end of it—

"Many of you will have seen, heard or been told of reports that wrongly impute that I made a personal profit on my publicly funded travel. I am taking legal steps in relation to those reports.

...

One last thing, I am trying to assess the extent of the damage done to my reputation through the media reports. I would be grateful for any feedback as to the impact that the reports (or accounts of them) had on you personally or any of your acquaintances."

Here was the chief executive of a department using email facilities to solicit staff and their family and friends to assist her in proposed private litigation against media outlets. She was using departmental email facilities to tout for assistance.

In line with the requirements of the Public Sector Ethics Act, the Department of Justice has a comprehensive Code of Professional Conduct, which specifically deals with conflicts of duty and interest and prohibiting the non-official use of resources. Even more relevant is that it deals with electronic mail. This is what the Code of Professional Conduct requires—

"While electronic mail (e-mail) is widely accepted by business and private users, its use by departmental officers carries particular responsibilities. Incorrect or inappropriate use can have serious consequences for the Department and officers.

...

Officers must not incorrectly or inappropriately use e-mail. E-mail is not to be used for sending personal messages."

It is patently obvious, in my opinion, that Ms Macdonnell has breached her own department's code of conduct. And if she has not, then there is at least a prima facie case to investigate. One does not use departmental facilities in an endeavour to drum up a case to sue in one's private capacity. It is wrong for any public servant to do that, let alone the head of a department.

The Premier would also know that a breach of a code of conduct approved under the Public Sector Ethics Act constitutes a disciplinary breach which requires the institution of disciplinary action under the Public Service Act. I initially wrote to the Attorney-General, asking what he intended to do. I found out from reading the Courier-Mail that the Attorney-General saw nothing wrong with using email facilities for private purposes. He intends to do nothing to uphold his own department's code of ethics.

**Mr SPRINGBORG** (Warwick—NPA) (Deputy Leader of the Opposition) (8.30 p.m.), continuing: Before the adjournment of this debate at 6 p.m., I was talking about my concerns about the use of departmental email facilities within the Department of Justice and Attorney-General by the director-general of that department. I was indicating my concern with regard to the enforcement of ethics and whether it was right that that email was being used. I was about to mention the Attorney-General and his lacklustre performance as the State's first law officer. He is probably a prime example of a person who pontificates about ethics in public life but, when given the responsibility of actually doing something to enforce ethics, not only remains inert but actually endorses patently unethical behaviour.

**Mr Borbidge:** A lack of organic ethics.

**Mr SPRINGBORG:** Yes, as the Opposition Leader says, a lack of organic ethics. Since then, I have written to the Public Service Commissioner about the matter, and the Premier should be hearing from him. The Premier is the employing authority under the Act and must comply with it. I await with interest his determination as to whether he intends to uphold the code of professional conduct of the Department of Justice made under the Public Sector Ethics Act or whether he will ignore this apparent blatant breach.

Really, this is a test case for the Premier. It underpins whether the Integrity Commissioner will be taken seriously and whether codes of conduct will be taken seriously—whether there is one rule for ordinary public servants and another for those in the top jobs earning six-figure sums. I would appreciate from the Premier, in his reply, advice as to whether abuse and misuse of public email for private purposes falls within the definition of "conflicts of interest" in this Bill.

I support the objective of this Bill, but my major concern is that it does not go far enough and could be perceived by many as a public relations gimmick. As I said at the outset today, I have very grave concerns about codes of ethics and codes of conduct to start with. I believe that, at the end of the day, we have to realise and acknowledge and, I believe, accept that a code of ethics or a code of conduct or a statement of ethical principles does very little to ensure that a person who is going to do the wrong thing is going to do the right thing. The only people who never get into trouble when dealing with codes of ethical conduct or an ethical statement are those people who are, by their very nature, going to be good anyway, that is, the majority of people in public life and the majority of people in Parliament, the Public Service or anywhere else within our community. I think that what happens is that we tend to lift the high bar to extraordinary levels when trying to address what is public concern or perceived public concern; but by doing that, some people still bump their heads, and what happens is that we further diminish people's respect for our institutions.

Time expired.

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